

***2011 ANNUAL REPORT
LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE***

WISCONSIN LEGISLATIVE COUNCIL

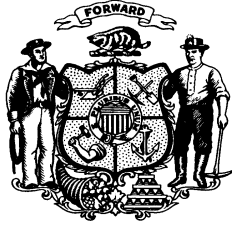
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March 2012

State of Wisconsin
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March 2012

TO: THE HONORABLE SCOTT WALKER, GOVERNOR, AND THE WISCONSIN
LEGISLATURE

This report of the calendar year 2011 activity of the Legislative Council Rules
Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson
Director

TCA:jal

WISCONSIN LEGISLATIVE COUNCIL STAFF
2011 ANNUAL REPORT ON THE
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE*

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* This Report was prepared by Pam Shannon, Director, and Scott Grosz and Jessica Karls-Ruplinger, Assistant Directors, Legislative Council Rules Clearinghouse.

FUNCTION OF THE LEGISLATIVE COUNCIL **RULES CLEARINGHOUSE**

REVIEW OF RULES

Legislative review of proposed permanent administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. [See the *Administrative Rules Procedures Manual* (November 2011), prepared jointly by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules. The Manual is available online at: <http://legis.wisconsin.gov/lc/adminrules/index.htm>.]

The Legislative Council has 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed rule, a Clearinghouse Rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Director of the Rules Clearinghouse assigns the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to the Director or an Assistant Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix 1* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the proposed rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule for conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.

5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal statutes and regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

OTHER RELATED RESPONSIBILITIES

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment, or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and to eliminate obsolete, duplicative, and conflicting rules. This report is the 32nd *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2011. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2010.

RECORDKEEPING SYSTEM

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks, and the Legislative Reference Bureau cooperate in a computerized recordkeeping system. Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a Clearinghouse Rule number and entered in the computer system by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate rule jacket and an Assembly rule jacket (similar to bill jackets) and the two rule jackets are then transmitted to the agency promulgating the rule. After transmittal, all legislative actions taken on the rule are entered on the face of the respective jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computer system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after the year 2000. These materials may be found at the Legislative Council's website, www.legis.wisconsin.gov/lc. A useful executive branch website for information about administrative rules is <https://health.wisconsin.gov/admrules/public/Home>.

SIGNIFICANT CHANGES TO THE RULE-MAKING PROCESS IN 2011

Significant changes to the rule-making process were enacted in 2011 Wisconsin Act 21, which took effect on June 8, 2011. In brief, Act 21: (1) places new limitations on agency rule-making authority; (2) requires approval by the Governor of scope statements and final draft rules for both emergency and proposed permanent rules; (3) requires that all agencies prepare economic impact analyses for proposed permanent rules; (4) requires referral of all proposed permanent rules to JCRAR; and (5) expands venue in declaratory judgment actions on the validity of rules to all counties. Legislative Council Information Memorandum 11-015 contains a detailed description of the provisions of Act 21 (and some additional changes in Act 32) and may be found at: http://legis.wisconsin.gov/lc/publications/im/IM2011_15.pdf.

As authorized in Act 21, Governor Walker issued Executive Order #50, dated November 2, 2011, which sets forth additional requirements and detailed rule promulgation instructions to agencies and establishes an Office of Regulatory Compliance as the point of contact on administrative rule-making in the Governor's office. Executive Order #50 is available at <http://www.doa.state.wi.us/docview/asp?docid=9032&docid=166>.

In addition, 2011 Wisconsin Act 46, which took effect on November 15, 2011, makes several changes to the rule-making process as it relates to small business and requires the involvement of the Small Business Regulatory Review Board (SBRRB). A detailed description of Act 46 is available at: <http://legis.wisconsin.gov/lc/publications/act/2011/act046-sb047.pdf>.

2011 ACTIVITIES OF THE RULES CLEARINGHOUSE

During 2011, 53 proposed administrative rules were submitted to the Legislative Council by 14 state agencies.

As of December 31, 2011, Clearinghouse reports had been completed on 49 of the 53 proposed rules and 4 rules were in the process of review. In addition to the 49 rule reports completed on 2011 rules, reports were prepared in 2011 on 8 rules received in late 2010. Of the 57 reports completed in 2011, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2011 are summarized below:

Rules Received in 2011		53
Withdrawn	0	
No report required	0	
Pending	4	
		-4
2011 Reports Completed		49
2010 Reports Completed in January 2011		8
Total Reports in 2011		57

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2011, the Clearinghouse has received 6,087 rule submissions and completed reviews on 5,990 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 4 were under review at the end of 2011.

<i>Year</i>	<i>Received</i>	<i>Completed</i>	<i>Exempt</i>
1979	70	45	12
1980	252	227	24
1981	252	234	9
1982	251	254	3
1983	222	220	4
1984	255	247	2
1985	213	206	4
1986	251	252	4
1987	182	186	1
1988	219	216	5
1989	212	208	1
1990	264	254	3
1991	199	205	2
1992	225	228	0
1993	241	232	1
1994	225	234	0
1995	236	224	2
1996	194	201	1
1997	158	159	1
1998	208	200	2
1999	170	177	1
2000	189	176	1
2001	157	158	1
2002	155	160	1
2003	126	127	2
2004	142	142	0
2005	122	123	0
2006	139	139	3
2007	117	114	0
2008	114	118	0
2009	123	108	3
2010	151	159	0
2011	53	57	0
Total	6,087	5,990	93

In 2011, rules were received from the following 14 state agencies:

Number of Proposed Rules, by Submitting Agency

Department of Agriculture, Trade and Consumer Protection	6
Department of Children and Families	1
Department of Commerce	8
Department of Corrections	1
Department of Employee Trust Funds	5
Department of Justice	1
Department of Natural Resources	9
Department of Regulation and Licensing	13
Department of Revenue	3
Department of Safety and Professional Services	1
Department of Transportation	1
Insurance Commissioner	2
Public Service Commission	1
Technical College System Board	1
Total Number of Rules Submitted	53

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2011, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 11 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 49 occasions.
3. A *conflict* with, or *duplication* of, existing rules on no occasions.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 31 occasions.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 52 occasions.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations on one occasion. In addition, the Legislative Council staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on no occasions.

WORKING WITH AND ASSISTING COMMITTEES

A Legislative Council staff attorney or analyst works with each standing committee and statutory committee, except the Joint Finance Committee. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee's oversight.

During 2011, legislative committees held hearings or requested meetings on 32 proposed rules. Modifications to rules were either requested or received in the legislative review of four proposed rules. Legislative committees objected to two rules during the year.

There were 25 rules subject to JCRAR jurisdiction in 2011, including the two rules that received a standing committee objection. Of those two, JCRAR took action on one in 2011. The remaining rules were subject to JCRAR jurisdiction in 2011 as a result of the Act 21 requirement, effective June 8, 2011, that all rules be referred to JCRAR following standing committee review.* In 2011, JCRAR held public hearings on six proposed permanent rules.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2011.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
11/2/79–80	322	18	5	1	0	No bill introduced, rule withdrawn
1981	252	29	10	4	4	Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981
1982	251	31	4	1	1	1983 Wisconsin Act 94
1983	222	30	5	0	0	—
1984	255	26	2	2	2	1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)
1985	213	37	8	3	2	♦ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or) ♦ 1985 Assembly Bill 460, passed and vetoed; override failed
1986	251	30	1	0	0	—
1987	182	30	5	0	0	—
1988	219	38	4	0	0	—
1989	212	22	6	2	0	♦ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass) ♦ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)
1990	264	29	2	1	0	♦ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)

* Prior to Act 21, only rules receiving a standing committee objection had to be referred to JCRAR. Act 21 requires that all rules be referred to JCRAR, but only requires that JCRAR take action on rules that received a standing committee objection.

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
1991	199	19	5	1	0	♦ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)
1992	225	33	3	2	1	♦ 1993 Wisconsin Act 9 ♦ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)
1993	241	24	1	0	0	—
1994	225	29	3	0	0	—
1995	236	19	0	0	0	—
1996	194	19	1	1	1	♦ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass) ♦ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)
1997	158	19	6	0	0	—
1998	208	15	0	0	0	—
1999	170	18	2	1	0	—
2000	189	20	2	1	1	♦ 1999 Wisconsin Act 178
2001	157	14	5	2	0	♦ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass); ♦ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass) ♦ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)
2002	155	35	2	1	0	♦ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)
2003	126	20	2	2	0	♦ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)
2004	142	21	4	2	1	♦ 2003 Wisconsin Act 240
2005	122	20	4	3	0	♦ 2005 Assembly Bill 8 and Senate Bill 8 (failed to pass) ♦ 2005 Assembly Bill 12 and Senate Bill 12 (failed to pass) ♦ 2005 Assembly Bill 401 and Senate Bill 200 (failed to pass) ♦ 2005 Assembly Bill 404 and Senate Bill 201 (failed to pass) ♦ 2005 Assembly Bill 442 and Senate Bill 220 (failed to pass)
2006	139	21	8	4	0	♦ 2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 37 and Senate Bill 9) ♦ 2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 27 and Senate Bill 10)
2007	117	16	2	0	0	—

LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES (November 2, 1979 Through December 31, 2011)*						
Year	Rules Submitted	Rules Subject to Modification	Committee Review Objections	JCRAR Rule Objections	Enacted Laws Following Rule Objections	Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections
2008	114	13	1	0	0	—
2009	123	4	0	0	0	—
2010	151	16	1	0	0	—
2011	53	6**	2	1	0	♦ 2011 Assembly Bill 196 and Senate Bill 139 (introduced; pending on December 31, 2011)
TOTAL	6,087	721	106	35	13 (PLUS ONE BILL PASSED AND VETOED; VETO NOT OVERRIDDEN)	

* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

** This includes two rules modified by JCRAR.

ELECTRONIC ACCESS

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. It also has the economic impact analyses and fiscal estimates prepared by agencies, as well as reports prepared by the SBRRB.

Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000. [The Clearinghouse also has given advice to the Department of Health and Family Services (now the Department of Health Services) regarding a searchable rules website operated by the Executive Branch. That website is now operated by the Department of Administration. The website is <https://health.wisconsin.gov/admrules/public/Home>.]

NOTICE OF CHANGE IN RULE-MAKING AUTHORITY

The changes in agency rule-making authority enacted in Wisconsin Act 21 were described in both the Legislative Council Act Memo on Act 21 (<http://legis.wisconsin.gov/lc/publications/act/2011/act021-jr1ab8.pdf>) and in Information Memorandum 11-15, cited above, on page 7. Both memoranda were widely distributed to inform the legislative branch and others of the changes contained in Act 21.

ASSISTING THE LEGISLATURE AND STATE AGENCIES

In 2011, the Legislative Council Rules Clearinghouse staff responded to considerably more than the usual number of questions concerning the rule-making process and the laws governing legislative and gubernatorial review of proposed rules, as a result of the changes enacted in Act 21. In addition, the Clearinghouse staff, joined by staff from the Legislative

Reference Bureau and the Governor's Office of Regulatory Reform, made several presentations to legislators, legislative staff, and state agency staff about the changes to agency rule-making authority and other requirements contained in Act 21, as well as changes to rule-making affecting small businesses enacted in 2011 Wisconsin Act 46.

PUBLIC LIAISON

In 2011, the Rules Clearinghouse staff received a number of requests from the public for information about aspects of the rule-making process or the status of specific rules.

PS:SG:JKR:jal

APPENDIX 1
SAMPLE CLEARINGHOUSE REPORT



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Richard Sweet
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Pam Shannon
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **11-039**

AN ORDER to repeal PSC 185.815, 185.84, and 185.87; to renumber PSC 185.21 (intro.) and 185.22 (5); to renumber and amend PSC 185.33 (2); to repeal and recreate ch. PSC 184 and 185.85; and to create PSC 185.12 (3e), (3m), (3s), (4m), (10e), (10m), (10s), (12m), (17m), (20g), (20r), and (22), 185.21 (1) (title) and (2), 185.33 (1m), 185.89, 185.90, and subchapter IX of ch. PSC 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.

Submitted by **PUBLIC SERVICE COMMISSION**

06-03-2011 RECEIVED BY LEGISLATIVE COUNCIL.

06-30-2011 REPORT SENT TO AGENCY.

PS:DLL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES ☒ NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES ☒ NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES ☐ NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES ☒ NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES ☒ NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES ☐ NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES ☐ NO ☒



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CLEARINGHOUSE RULE 11-039

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

Section PSC 184.01 (2) states that nothing in ch. PSC 184 precludes the commission from “giving individual consideration to exceptional or unusual situations or, upon investigation, from establishing requirements for a utility or service that are different from those provided in this chapter.” This language appears to allow the commission to proceed as if there were no rule in place if it chose to do so, giving “individual consideration” (which is not defined) or applying different requirements for a utility or service under any circumstances that it could justify as “exceptional or unusual situations” or “upon an investigation” (also not defined.). It appears to allow variance from provisions of the rule that repeat statutory requirements.

The commission should ensure that statutory provisions allow for such variances from requirements that would otherwise apply and not rely solely on a rule provision to provide that authority. Further, the rule should specify the types of “exceptional or unusual situations” that would justify applying different requirements.

2. Form, Style and Placement in Administrative Code

a. The number of any section in the PSC series of the Administrative Code should be preceded by the initials “PSC.” This rule fails to observe this convention in several instances. [s. 1.03 (2) (b), Manual.]

b. In s. PSC 184.04 (1) (c), the term “*force majeure*” should be replaced with an English equivalent or with descriptive language expressing this idea more precisely. [s. 1.01 (1), Manual.]

c. Where multiple subunits of a section of the Administrative Code are affected by a single rule SECTION, the section number is not repeated for each subunit. See, for example, the treatment in this rule of s. PSC 185.12 (10e), (10m), and (10s). [s. 1.04 (2) (a) 4., Manual.]

d. In s. PSC 185.12 (20g), the exception to the exception (“unless otherwise specified by tariff”) to the definition of “residential customer” is substantive, and should be placed in the main text of the rule. [s. 1.01 (7) (b), Manual.] What is more, the exception to the exception conflicts with the definition of “commercial customer”. The definitions should specify that multi-family dwellings where three or more dwelling units are served by a single water meter are commercial customers; the substantive provisions of the rule would then authorize a water utility to provide a separate tariff for those customers or to include them in the residential tariff.

e. A rule section should be added at the end specifying the effective date of the rule.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Where is the PSC’s Uniform System of Accounts laid out? A reference to this would make the definition of “plant”, in s. PSC 184.02 (6), more useful, and would help clarify subsequent provisions, as well.

b. In s. PSC 184.05 (a), the reference to s. PSC 184.03 should be to s. PSC 183.04.

c. Section PSC 185.85 (3) requires that audits be in a format specified by the PSC. This rule is where that format should be specified, and the form should be attached to the rule package when it comes to the Legislature for review. The same comment applies to s. PSC 185.97 (5). [s. 1.09 (2), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. As noted in comment 4. a., above, the term “plant” is defined in s. PSC 184.02 (6). However, in s. PSC 184 .02 (1), it is unclear what is meant by “a unit of plant or mains”. The wording seems awkward, but perhaps this is a term of art in the industry. If it is grammatically correct as stated, it might be helpful to define the phrase. Otherwise, for example, it appears that the word “an” should be inserted before “existing plant” in s. PSC 184.03 (2) (c). See also s. PSC 184.03 (5) (f) and review the entire rule for other occurrences of the word “plant” not preceded by an article.

b. In s. PSC 184.03 (2) (b), the phrase “an area” should be replaced by “a service area”.

c. In s. PSC 184.03 (3), what does “deregulation” refer to? Because the commonly understood meaning of this term does not make sense in this context, a definition for the term is needed.

d. In s. PSC 184.03 (4) (a) 7., if “sewer facilities” includes two things--pumping facilities and sewage treatment and disposal plants--the comma following “facilities” should be replaced by the word “or”. If it includes three things--pumping facilities, sewage treatment plants, and disposal plants, then the comma after “utilities” should be retained and the phrase “treatment and” should read “treatment, or”.

e. In s. PSC 184.03 (4) (b), the comma after “purchasing” should be deleted and a comma should be inserted after “par. (a)”.

f. In s. PSC 184.04 (3) (j), “other units of government” should be clarified to indicate whether it refers to other state agencies, local units of government, or both.

g. In s. PSC 184.05 (2), presumably the intent is that the application is considered approved if the commission takes no *final* action (i.e., an action to approve or deny the application) within 90 days of its notice of investigation. As written, the commission could notice a hearing on the application (a kind of action) and this 90-day deadline would have been met. Also, this provision should be rewritten in the active voice.

h. Chapter PSC 184, as affected by this rule, refers variously to “a person,” “a utility,” or “a person or utility.” In some cases, such as s. PSC 184.03 (1) and (2), the distinction is clear; in other cases it is not clear. For example, presumably s. PSC 184.04 (1) should refer to “person or utility”, since it applies to projects requiring PSC authorization under s. PSC 184.03, and since s. PSC 184.03 (1) applies to “any person”. It appears that s. PSC 184.04 (6) should also refer to “person or utility”. The entire chapter should be reviewed for correct use of these terms.

i. In s. PSC 184.06, it would be helpful to define “emergency”. The language in s. PSC 185.89 (2) (a) relating to emergency operations may be helpful.

j. Section PSC 185.12 (3m) should be revised to clarify that the numbers 1,000 and 4,000 are included, such as “...that has not fewer than 1,000 nor more than 4,000 service connections”.

k. Read strictly, the second sentence of the definition of “irrigation customer” in s. PSC 185.12 (10s) is not limited to irrigation and other outdoor uses. For example, it could include a water bottling plant. This could be clarified by inserting the phrase “that is used primarily for irrigation and other outdoor uses and” after “measuring water”. Also, the use of the word “may” is inappropriate in a definition--either the term includes the described entities or it does not. If there is discretion in application of the term, that should be dealt with in the main text of the rule.

l. Does the term “non-residential customer” in s. PSC 185.12 (12m) include irrigation customers, as the common meaning of the term would suggest? If not, this should be clarified; if it does, are there any customers (other than residential customers) that it does *not* include? If not, it would not seem necessary to define the term.

m. In s. PSC 185.12 (17m), the reference to “authority” in the term “public authority customer” could cause confusion, as the word “authority” refers to a set of quasi-governmental entities created by statute and delineated in s. 16.70 (2), Stats. Use of a different term should be considered. Note that the definition of “agency” in s. 16.70 (1e), Stats., appears to cover the state-level entities that the rule is attempting to capture.

n. This rule would be an opportunity to replace the semicolons at the ends of s. PSC 185.21 (1) (a) to (h), as renumbered by this rule, with periods. The same applies with regard to s. PSC 185.33 (4), and possibly with regard to other sections. Also, while cleaning up s. PSC 185.33 (4), note that, in s. PSC 185.33 (4) (intro.), the word “should” should be replaced with

“shall”. There likely are other format errors in the chapters affected by this rule that could be cleaned up.

o. There are two subsections numbered s. PSC 185.85 (3); the second, obviously, should be s. PSC 185.85 (4).

p. In the treatment clause to s. PSC 185.85 (in SECTION (17)), “recreated” should not have a hyphen. Also, in the rule text, “unaccounted-for” should be hyphenated, as it is in the analysis, since it is used as an adjective. In s. PSC 185.95, “cost effectiveness” should **not** be hyphenated, since it is used as a noun.

q. In s. PSC 185.85 (2) (d), what is “cost-effective”? How, and by whom, is cost effectiveness determined? These questions are only partially answered by subch. IX of ch. PSC 185. In s. 185.85 (2) (g), the phrase “, in accordance with sub. (3)” could be added after “audit”.

r. Is there a Class A of water utilities? Is it to this class that s. PSC 185.85 (4) (b) 1. applies? If so, that subdivision should say as much; if not, to whom does it apply? Also, if there is a Class A of water utilities, should s. PSC 185.85 (4) (d) include them?

s. The final use of the word “and” in s. PSC 185.85 (4) (d) should be replaced with “or”.

t. Does a water shortage curtailment plan under s. PSC 185.90 (2) require PSC approval before the applicability provision in s. PSC 185.90 (3) is effective, or will any plan supersede s. PSC 185.90? If approval is required, the rule should say so.

u. In s. PSC 185.90 (6), the word “ESSENTIAL” in the title is misspelled.

v. Section PSC 185.97 (1) (b) is superfluous, since a water utility may not implement **any** elements of a voluntary water conservation program without PSC approval. If sub. (1) (b) is eliminated, the “(a)” after the subsection title should be deleted.

APPENDIX 2
PROCESSING INSTRUCTIONS TO AGENCY HEADS



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Pam Shannon
Clearinghouse Director

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Assistant Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

PLEASE NOTE: Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

FOR YOUR INFORMATION: A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

— *SAMPLE* —

CLEARINGHOUSE RULE ASSEMBLY
11-039

AN ORDER to repeal PSC 185.815, 185.84, and 185.87; to renumber PSC 185.21 (intro.) and 185.22 (5); to renumber and amend PSC 185.33 (2); to repeal and recreate ch. PSC 184 and 185.85; and to create PSC 185.12 (3e), (3m), (3s), (4m), (10e), (10m), (10s), (12m), (17m), (20g), (20r), and (22), 185.21 (1) (title) and (2), 185.33 (1m), 185.89, 185.90, and subchapter IX of ch. PSC 185, relating to water conservation and construction by water utilities and municipal combined water and sewer utilities.

Submitted by Public Service Commission

06-03-11	Received by Legislative Council.		
06-30-11	Report sent to Agency.		

NOTE: EACH SUBSEQUENT ACTION TAKEN BY A STANDING COMMITTEE OR THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES WILL BE ENTERED ON THE JACKETS BY APPROPRIATE LEGISLATIVE STAFF.